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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,214	01/28/2004	Ray Bojarski	00167-524001 / 02-31-0483	7657
7590	11/15/2006		EXAMINER	
Joel R. Petrow, Esq. Chief Patent Counsel Smith & Nephew, Inc. 1450 Brooks Road Memphis, TN 38116			KOTINI, PAVITRA	
		ART UNIT	PAPER NUMBER	
		3731		
DATE MAILED: 11/15/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/765,214	BOJARSKI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Pavitra Kotini	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 January 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/24/06, 7/20/05, 4/23/04</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-8 and 22** are rejected under 35 U.S.C. 102(b) as being anticipated by Bonutti et al (US06010525).

Regarding **claim 1**, Bonutti discloses a body (fig.29, 622) defining a tapered hole (fig.20, 650) and defining a slot (fig.29, 662) communicating with the hole.

The statements of intended use ("for guiding a member into a tube" and "for separating the body and the member") have been carefully considered but deemed not to impose any structural limitations on the claims patentably distinguishable over the prior art's device, which is capable of being used as claimed if one desires to do so.

Regarding **claim 2**, Bonutti discloses a body defines a bore (fig.29, 632) communicating with the tapered hole.

Regarding **claim 4**, Bonutti discloses the bore is tapered (fig. 29).

Regarding **claim 5**, Bonutti discloses a width of the bore is greater than a width of a narrowest portion of the tapered hole (fig. 29 shows 630 greater in width relative to the base of the hole 650).

Regarding **claim 6**, Bonutti discloses the slot (fig.29, 662) extends from the tapered hole and the bore to an external surface of the body.

Regarding **claim 7**, Bonutti discloses a suture thread (fig.29, 52).

Regarding **claim 8**, Bonutti a handle extending from the body (fig.35, 806).

Regarding **claim 22**, Bonutti discloses a guide means (fig.29, 662). The statement of intended use: "for guiding a member into a tube, the guide means including means for separating the guide means and the member" has been carefully considered but deemed not to impose any structural limitations on the claims. Bonutti's device is capable of being used as claimed if one desires to do so.

**Claims 20-21** are rejected under 35 U.S.C. 102(b) as being anticipated by Orchowski et al (US-5474562).

Regarding **claim 20**, coupling a body (fig.2, 22) to an end of a tube (fig.2, 18), the body defining a tapered hole (fig.21, 21) and a slot (fig.23, 82); guiding a member into the tube through the tapered hole (fig.3); and separating the body and the member by passing the member through the slot (fig.1).

Regarding **claim 21**, receiving the end of the tube in a bore (fig.7, 62) in the body, the bore communicating with the tapered hole (col.8, lines 5-8).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 9 - 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonutti et al (US-6010525) in view of Standefer (US-3392894).

Regarding **claim 9**, Bonutti discloses a body (fig.29, 622) defining a tapered hole (fig.29, 650), and defining a slot (fig.29, 662) communicating with the hole. Bonutti does not disclose a "tube".

However, Standefer teaches a tube (fig.1, 16). Therefore, it would have been obvious to a person of ordinary skill in the art to modify the hole disclosed by Bonutti to incorporate a tube as taught by Standefer. Such a modification would allow a tube to be loaded with the suture threads.

Regarding **claim 10**, the statement of intended use ("for connection to an end of the tube") is deemed functional language and the device disclosed by Bonutti is capable of being connected to a tube.

Regarding **claim 11**, Bonutti discloses the body defining a bore, the bore communicating with the tapered hole. The statement of intended use, "for receiving the tube" is once again deemed not to impose any structural limitations.

Regarding **claim 13**, Bonutti discloses the bore is tapered (fig. 29).

Regarding **claim 14**, Bonutti discloses a width of the bore is greater than a width of a narrowest portion of the tapered hole (fig. 29 shows 630 greater in width relative to the base of the hole 650).

Regarding **claim 15**, Bonutti discloses the slot (fig.29, 662) extends from the tapered hole and the bore to an external surface of the body.

Regarding **claim 16**, Standefer teaches the tube defining an opening (fig.1, top of 16).

Regarding **claim 17**, Standefer teaches a width of the opening is substantially the same as a width of the narrowest portion of the tapered hole (fig.1).

Regarding **claim 18**, Bonutti discloses a suture thread (fig.29, 52).

Regarding **claim 19**, Bonutti a handle extending from the body (fig.35, 806).

Regarding **claim 3 and 12**, Bonutti discloses a bore, but does not disclose the bore to have a constant diameter. The instant disclosure describes this parameter as merely preferable and does not describe it as contributing any unexpected result to the loading of the suture. As such this parameter is deemed a matter of preference (lacking in any criticality) and well within the skill of the ordinary artisan.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pavitra Kotini whose telephone number is 571-272-0624. The examiner can normally be reached on M-F 8:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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ANHTUAN T. NGUYEN  
SUPERVISORY PATENT EXAMINER

11/01/06